

Before the  
Administrative Hearing Commission  
State of Missouri



CHARLES & MARY HARTER,

Petitioners,

vs.

DIRECTOR OF REVENUE,

Respondent.

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No. 13-2024 RI

**DECISION**

We dismiss the complaint filed by Charles and Mary Harter because we lack jurisdiction to hear it at this time.

**Procedure**

On November 26, 2013, the Harters filed a complaint appealing an income tax notice of 10 day demand issued by the Director of Revenue (“Director”). On December 5, 2013, the Director filed a motion to dismiss supported by an affidavit and copies of the Director’s records. We treat the motion as a motion for summary decision because it relies on matters other than allegations in the complaint and stipulations.<sup>1</sup> We will grant the motion if the Director

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<sup>1</sup> 1 CSR 15-3.436(4)(A). All references to “CSR” are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

establishes facts that entitle him to a favorable decision and the Harters do not dispute those facts.<sup>2</sup> On December 11, 2013, the Harters responded to the motion. The following facts are undisputed.

### **Findings of Fact**

1. On November 20, 2013, the Director issued the Harters a Notice of 10 Day Demand – Individual Income (“the notice”) concerning the 2010, 2011, and 2012 tax years (“tax period”).
2. On December 2, 2013, The Director issued a letter to the Harters admitting the notice was issued in error. The Director also informed the Harters that their protest was timely, an informal hearing had been arranged for December 9, 2013, and that a final decision would be issued upon completion of this review.
3. To date, the Director has not issued a final decision regarding the tax period.

### **Conclusions of Law**

Section 621.050.1<sup>3</sup> gives us jurisdiction over an appeal of “any finding, order, decision, assessment or additional assessment made by the director of revenue.” Before our jurisdiction arises, however, a protest must be filed with the Director and the Director must issue a final decision on that protest.<sup>4</sup>

The Harters filed a protest with the Director for the tax period, but the Director has not yet issued a final decision on the protest. Therefore, we have no jurisdiction over the Harters’ complaint at this time because the protest procedure has not yet concluded. If we have no

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<sup>2</sup> 1 CSR 15-446(6)(A).

<sup>3</sup> Statutory references, unless otherwise noted, are to RSMo 2000.

<sup>4</sup> Sections 143.631.1 and 143.651; *State ex. rel. Fischer v. Brooks*, 150 S.W.3d 284, 284 (Mo. banc 2004) (describing the filing of a protest as the “exclusive remedy for challenging the assessment.”); *State ex rel. Fischer v. Sanders*, 80 S.W.3d 1 (Mo. App., W.D. 2002) (setting forth the protest as a necessary step in appealing a case to this Commission and then to a court).

jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>5</sup>

If the Director subsequently issues a final decision unfavorable to the Harters, they may appeal the final decision to this Commission at that time.

### **Summary**

We grant the Director's motion to dismiss the complaint because we lack jurisdiction to hear it at this time.

SO ORDERED on December 17, 2013.

/s/ Sreenivasa Rao Dandamudi \_\_\_\_\_  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>5</sup> *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).